FILED
APR 26 1945
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

No. 1207

October Term, 1945.

UNITED STATES OF AMERCIA,
Plaintiff-Respondent,

vs.

CITY OF PHILADELPHIA; RUFUS S. REEVES, DIRECTOR OF DEPARTMENT OF PUBLIC HEALTH, and HERBERT M. PACKER, CHIEF OF THE DIVISION OF HOUSING AND SANITATION OF THE DEPARTMENT OF PUBLIC HEALTH OF THE CITY OF PHILADELPHIA,
Defendants-Petitioners.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT WITH BRIEF IN SUPPORT THEREOF.

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TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The City of Philadelphia, a municipal corporation of the first class of the Commonwealth of Pennsylvania, Rufus S. Reeves, Director of the Department of Public Health, and Herbert M. Packer, Chief of the Division of Housing and Sanitation of the Department of Public Health of said City, petitioners, pray that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Third Circuit, rendered on the 16th day of February, 1945, (Appendix pp. 27, 28), affirming the final decree of the United States District Court for the Eastern District of Pennsylvania granting an injunction as prayed for by the plaintiff.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The United States of America, acting under the alleged authority of the Act of Congress of October 14, 1940, C. 862, 54 Stat. 1125, 42 U.S.C. Section 1521 et seq., commonly known as the "Lanham Act", acquired title by condemnation to a tract of land within the corporate limits of the City of Philadelphia in the Commonwealth of Pennsylvania, and erected thereon a group of buildings for the declared purpose of providing housing facilities for workers engaged in industries deemed essential to the prosecution of the present war. Subsequently the Government proceeded to erect on said tract three additional buildings designated as the Community, Maintenance and Commercial Facilities (Stores) Buildings respectively, for the use and accommodation of the occupants of the said housing facilities, awarding the contracts therefor through the agency of the Philadelphia Housing Authority.

Those buildings were in course of construction in violation of divers material provisions of the Plumbing Code of the Commonwealth of Pennsylvania, Act of June 7, 1911, P. L. 680, as amended, 53 P. S. 4071 et seq.; and the Building Code of the City of Philadelphia (Ordinance of August 31, 1937, p. 433, Ordinance of 1937) adopted in pursuance to the express legislative authority contained in the Act of Assembly of April 14, 1937, P. L. 313, 53 P. S. 2224. Thereupon on October 20, 1943, Herbert M. Packer, Chief of the Division of Housing and Sanitation of the Department of Public Health of the City of Philadelphia advised the Philadelphia Housing Authority by letter that it would be necessary to file plans and secure permits for the construction of the proposed buildings. Notwithstanding that notice, the Government nevertheless proceeded to erect those buildings in disregard of the local plumbing and building codes aforestated.

Subsequently the Government instituted a civil action in the United States District Court for the Eastern District of Pennsylvania against the said Herbert M. Packer, Chief of the Division of Housing and Sanitation of the Department of Public Health, Rufus S. Reeves, Director of the Department of Public Health, and the City of Philadelphia praying for an injunction to restrain the defendants from interfering with the erection of said buildings in the manner aforestated.

Upon hearing before the Honorable Judge Harry E. Kalodner of that court, a final decree was entered granting said injunction. On appeal to the United States Circuit Court of Appeals for the Third Circuit, the decree of the District Court was affirmed in a per curiam opinion based upon the decision of that Court in the case of United States of America v. City of Chester, 3 Cir. 144, F. (2d) 415. That case arose out of the construction of housing units of an admittedly temporary character upon leased ground in the City of Chester, Pennsylvania, and subject to the express provision that following cessation of the present war those structures would be demolished. In instant case, on the

other hand, the buildings are admittedly of a permanent character, and following the end of the war, are to be sold and disposed of to private parties and persons, and to become integrated into the housing facilities of the City of Philadelphia.[1]

JURISDICTION.

Jurisdiction of this court is invoked pursuant to the Act of Congress of March 3, 1891, C. 517, Section 6, 26 Stat. 828 as amended: 28 U.S.C. Section 347.

The effect of the decision of the Circuit Court of Appeals is to nullify numerous vital and salutary provisions of the Pennsylvania Plumbing Code for cities of the first class, and of the local Building Code insofar as they apply to buildings of the type involved herein, namely permanent structures. While those buildings were originally intended for the purpose of providing housing facilities for persons engaged in essential industries during the present national emergency, are nevertheless intended to be ultimately sold to private parties to be used as dwellings, and to become permanently integrated into the housing facilities of the City of Philadelphia.

Wherefore there is involved in this case the construction of the Lanham Act, supra, and certain provisions of the Federal Constitution, particularly the war powers of Congress as enumerated in Section 8, of Article I; the Supremacy Clause contained in Article VI, Clause 2; and the Tenth Amendment.

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[1] See Lanham Act, 42 U. S. C. Sect. 1521 et seq.

THE QUESTIONS PRESENTED.

The questions presented for determination in the instant proceeding are the following:

Are local Building Laws enacted under the Police Power of the State, and must all permanent structures intended for private habitation be erected in compliance therewith?

Must the erection by the Federal Government of permanent dwelling units ultimately intended for use and occupancy by private individuals be in compliance with the local Building and Sanitation Laws?

Does an expression in an Act of Congress of an intent to sell housing facilities to private individuals necessarily involve a mandate that such facilities conform to the standards of health and safety established by the local law?

Does the Supremacy Clause of the Constitution empower an administrative officer of a Federal Housing Agency to ignore local regulations regarding structural safety and sanitation of dwelling units?

Is such authorization contained in the Lanham Act and if not, can it be supplied by implication?

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

I. This case involves a question of wide scope and great public import namely, whether a Federal Housing Agency is vested with power to erect buildings within the corporate limits of a municipality, in disregard of the local laws regulating construction, erection and sanitation, where such buildings are intended for dwelling purposes and ultimately to be sold to the public and to become permanently integrated into the housing facilities of the municipality.

II. The opinion of the Circuit Court of Appeals for the Third Circuit in the instant case rendered February 16, 1945, asserts that there is no distinction between permanent structures and temporary ones, and relies upon the decision of that court in United States v. City of Chester, 144 F. (2d) 415, which involved housing units of a temporary character erected upon leased ground.

III. The effect of the lower court's decision is to hold that the Federal Administrator, in the exercise of his sole discretion, may supersede local building and health laws and regulations without any evidence of necessity therefor.

IV. Where the Federal Government directly or through a Federal Housing Agency asserts the right to disregard local laws regulating construction and sanitation of dwelling units, such authority should be expressly conferred by Act of Congress, and not read into a statute by implication.

V. The final determination of the issues involved in this case is of vital importance to every municipality in the United States. Upon such determination will depend the extent to which the several states of the Union and their municipal subdivisions may enforce their police powers to establish laws and regulations for the structural safety, health and sanitation of their housing facilities.

We therefore respectfully submit that this petition should be granted.

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